

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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STACEY REILLY,

Case #:

Plaintiff,

VERIFIED COMPLAINT

- against -

UNITED STATES OF AMERICA,

**PLAINTIFF DEMANDS
A TRIAL BY JURY**

Defendants.

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COMPLAINT FOR DAMAGES UNDER THE FEDERAL TORT CLAIMS ACT

Plaintiff, STACEY REILLY, by her attorneys, **DELL & DEAN, PLLC**, complaining of the Defendant, **UNITED STATES OF AMERICA**, respectfully amends her complaint and alleges as follows:

INTRODUCTION

FIRST: This is an action against the Defendant, United States of America, under the Federal Tort Claims Act, (28 U.S.C. § 2671, et seq.) and 28 U.S.C. § 1346 (b), for negligence of National Park Service employees in the failure to warn of a dangerous defective and hazardous condition in the roadway at Fort Wadsworth Gateway National Recreation Area.

SECOND: The claims herein are brought against the Defendant pursuant to the Federal Tort Claims Act (28 U.S.C. § 2671, et seq.) and 28 U.S.C. § 1346 (b), for money damages as compensation for personal injuries caused by the Defendant's negligence.

THIRD: Plaintiff, STACEY REILLY, has fully complied with the provisions of 28 U.S.C. § 2675 of the Federal Tort Claims Act. *Standard Form 95 attached as Exhibit 1.*

FOURTH: This suit has been timely filed, in the Plaintiff, STACEY REILLY, timely served

notice of her claim on the National Park Service less than two years after the incident forming the basis of this suit.

FIFTH: Plaintiff, STACEY REILLY, is now filing this Complaint pursuant to 28 U.S.C. § 2401 (b), after receiving a denial of claim from the United States Department of the Interior dated May 17, 2017. *Administrative Tort Claim Denial Letter attached as Exhibit 2.*

PARTIES, JURISDICTION AND VENUE

SIXTH: Plaintiff, STACEY REILLY, at the time of the institution of this action, was and still is a resident of the County of Richmond, City and State of New York.

SEVENTH: That upon information and belief, and at all times hereinafter mentioned, the defendant, UNITED STATES OF AMERICA, through the NATIONAL PARK SERVICE owned, operated and maintained Fort Wadsworth Gateway National Recreation Area, located at 210 New York Avenue, Staten Island, New York. (hereinafter “Fort Wadsworth”).

EIGHTH: That at all times hereinafter mentioned, the defendant, UNITED STATES OF AMERICA, was aware of a defective, dangerous, hazardous condition in the roadway known as U.S.S. North Carolina Road and failed to warn plaintiff or others of same.

NINTH: That at all times hereinafter mentioned, the directors, officers, operators, administrators, employees, agents and staff were employed by and/or acting on behalf of the defendant. Furthermore, the defendant is responsible for the negligent acts of their employees and agents under respondent superior.

TENTH: That at all times hereinafter mentioned, defendant, UNITED STATES OF AMERICA, through their directors, officers, operators, administrators, employees, agents and staff, is responsible for the inspection, upkeep and postings of warnings on the roadways located on the grounds of Fort Wadsworth.

ELEVENTH: That jurisdiction properly lies with the Federal District Court pursuant to Title 28 U.S.C. § 1346 (b).

TWELFTH: Venue is proper under 28 U.S.C. § 1402 (b), in that all, or a substantial part of the acts and omissions forming the basis of these claims occurred in the Eastern District of New York.

FACTUAL ALLEGATIONS

THIRTEENTH: That on the 7th day of June, 2015, plaintiff, STACEY REILLY, was lawfully riding her bicycle on the grounds of Fort Wadsworth, specifically the U.S.S. North Carolina Road between Battery Hudson Road and Tennessee Range Road (hereinafter, “the roadway”) and was attempting to avoid a speed bump in the road when her front tire got caught in an open rut on the seam of the road, causing plaintiff’s bicycle to flip over and causing plaintiff, STACEY REILLY, to sustain serious personal injuries and property damage to her bicycle.

FOURTEENTH: That prior to this incident, defendant, UNITED STATES OF AMERICA, was aware of the existence of the open rut, its dimensions, and of prior injuries sustained by others in accidents at the same location, yet failed to post any warnings of said condition.

FIFTEENTH: That as a result of the defendant’s negligence, and failure to warn, the plaintiff, STACEY REILLY, was cause to sustain personal injuries and was rendered sick, sore, lame and disabled, experiencing great pain and suffering and was required to seek medical treatment and be confined to her home and bed and has sustained serious injury, including but not limited to fractured right clavicle, fractured right orbit, fractured right cheekbone, head and neck injuries and has undergone multiple surgeries.

FIRST CAUSE OF ACTION - NEGLIGENCE

SIXTEENTH: That the defendant, UNITED STATES OF AMERICA, by and through their

directors, officers, operators, administrators, employees, agents and staff, on the 7th day of June, 2015, at approximately 10:30 a.m., were reckless, careless, and negligent in failing to warn plaintiff of the condition of the roadway, permitting seam openings and cuts in the roadway to exist and erode, causing potholes to form, and not warning plaintiff of their existence, and in allowing the aforesaid dangerous and defective conditions to exist without warning and in failing to protect the public including plaintiff from the aforesaid dangerous and defective conditions by warning them of same.

SEVENTEENTH: That the aforesaid defective and dangerous condition of the roadway existed for an extended period of time that the defendant, UNITED STATES OF AMERICA, through its directors, officers, operators, administrators, employees, agents and staff knew or should have known of the condition upon regular inspection, maintenance, and control of the roadway, as well as from prior complaints, accidents, and lawsuits arising from the condition that occurred in the years prior to plaintiff's accident.

EIGHTEENTH: As a direct and proximate results of defendant's negligence, plaintiff, STACEY REILLY, has sustained serious and personal injuries in and about her body; she has incurred medical expenses and other damages, and will continue to incur medical expenses and other damages in the future; she was forced to endure pain, suffering and mental anguish, and will continue to endure pain, suffering and mental anguish in the future, she has suffered a loss of enjoyment of life, and will continue to suffer a loss of enjoyment of life in the future; and she has lost wages and will continue to lose wages in the future.

NINETEENTH: The acts and/or omissions set forth above would constitute a claim under the law of the State of New York.

TWENTIETH: The defendant is liable pursuant to 28 U.S.C. § 1346 (b).

**SECOND CAUSE OF ACTION - VICARIOUS LIABILITY, RESPONDENT SUPERIOR
OSTENSIBLE AGENCY AND/OR AGENCY**

TWENTY-FIRST: Plaintiff, STACEY REILLY, repeats, realleges and reiterates each and every allegation above is if fully set forth herein.

TWENTY-SECOND: At all times relevant to this case, the directors, officers, operators, administrators, employees, agents and staff were employed by and/or acting on behalf of the defendant, UNITED STATES OF AMERICA.

TWENTY-THIRD: At all times relevant to this Complaint, the directors, officers, operators, administrators, employees, agents and staff acted within their respective capacities and scopes of employment for the defendant, UNITED STATES OF AMERICA.

TWENTY-FOURTH: That the accident and the injuries resulting to the plaintiff, STACEY REILLY, therefrom were proximately caused by reason of the negligence of the defendant by and through its directors, officers, operators, administrators, employees, agents and staff, herein in the ownership, control and maintenance of the roadway.

TWENTY-FIFTH: As a direct and proximate result of the defendant's negligence, plaintiff, STACEY REILLY, has sustained serious and permanent personal injuries in and about her body; she has incurred medical expenses and other damages, and will continue to incur medical anguish, and will continue to endure pain, suffering and mental anguish in the future; she has suffered a loss of enjoyment of life, and will continue to suffer a loss of enjoyment of life in the future; and she has lost wages and will continue to lose wages in the future.

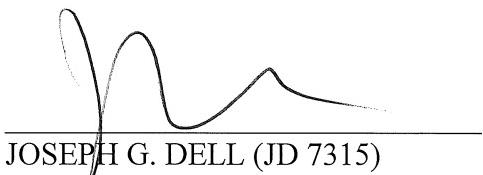
TWENTY-SIXTH: The acts and/or omissions set forth above would constitute a claim under the law of the State of New York.

TWENTY-SEVENTH: The defendant is liable pursuant to 28 U.S.C. § 1346 (b).

PRAYER FOR RELIEF

WHEREFORE, plaintiff, STACEY REILLY, demands judgment against the defendant on these causes of action as follows: 1) for personal injury in the amount of FIVE MILLION (\$5,000,000.00) DOLLARS and 2) for the property damage to her bicycle in the amount of SEVEN HUNDRED SIXTY TWO (\$762.13) DOLLARS and THIRTEEN CENTS altogether with the interests, costs and disbursements of this action.

Dated: Garden City, New York
November 17, 2017



JOSEPH G. DELL (JD 7315)
DELL & DEAN, PLLC
Attorneys for Plaintiff
STACEY REILLY
1225 Franklin Avenue, Suite 450
Garden City, New York 11530
(516) 880-9700
File No.: 02618

TO: U. S. Attorney - EDNY
147 Pierpont Street
Brooklyn, New York 11201

Attorney General of the United States
Department of Justice, Room 5111
10th & Constitutional Avenue, NW
Washington, DC 20530

EXHIBIT "1"

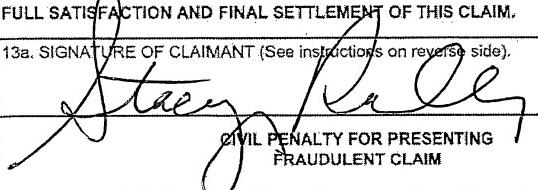
CLAIM FOR DAMAGE, INJURY, OR DEATH		INSTRUCTIONS: Please read carefully the instructions on the reverse side and supply information requested on both sides of this form. Use additional sheet(s) if necessary. See reverse side for additional instructions.	FORM APPROVED OMB NO. 1105-0008
1. Submit to Appropriate Federal Agency: National Park Service Gateway National Recreation Area 201 New York Avenue, Staten Island, New York 10305		2. Name, address of claimant, and claimant's personal representative if any. (See instructions on reverse). Number, Street, City, State and Zip code. Stacey Reilly c/o Dell & Dean PLLC 1225 Franklin Avenue, Garden City, NY 11530	
3. TYPE OF EMPLOYMENT <input type="checkbox"/> MILITARY <input checked="" type="checkbox"/> CIVILIAN	4. DATE OF BIRTH 04/30/1969	5. MARITAL STATUS Single	6. DATE AND DAY OF ACCIDENT 06/07/2015
7. TIME (A.M. OR P.M.) 10:30 a.m.			
8. BASIS OF CLAIM (State in detail the known facts and circumstances attending the damage, injury, or death, identifying persons and property involved, the place of occurrence and the cause thereof. Use additional pages if necessary).			
<p>Claimant was riding her bicycle on USS North Carolina Road between Battery Hudson Road and Tennessee Range Road, within Fort Wadsworth, Staten Island, NY and, without any warnings or notifications, came upon a defective speed bump in the road and in trying to avoid same struck broken asphalt and roadway surrounding the speedbump causing her to be thrown from her bicycle. (See Attached Sheet for further details of defect location).</p>			
9. PROPERTY DAMAGE NAME AND ADDRESS OF OWNER, IF OTHER THAN CLAIMANT (Number, Street, City, State, and Zip Code).			
BRIEFLY DESCRIBE THE PROPERTY, NATURE AND EXTENT OF THE DAMAGE AND THE LOCATION OF WHERE THE PROPERTY MAY BE INSPECTED. (See instructions on reverse side).			
Bicycle, damaged frame and wheels, located at 150 Sandalwood Drive, Staten Island, NY 10308			
10. PERSONAL INJURY/WRONFUL DEATH STATE THE NATURE AND EXTENT OF EACH INJURY OR CAUSE OF DEATH, WHICH FORMS THE BASIS OF THE CLAIM. IF OTHER THAN CLAIMANT, STATE THE NAME OF THE INJURED PERSON OR DECEDENT.			
Fractured right clavicle, fractured right orbit, fractured right cheekbone, head injury including loss of consciousness and concussion, neck injury requiring surgery.			
11. WITNESSES			
NAME		ADDRESS (Number, Street, City, State, and Zip Code)	
Steven Lugo		103 Abbot Street, Staten Island, New York 10305	
12. (See instructions on reverse). AMOUNT OF CLAIM (in dollars)			
12a. PROPERTY DAMAGE 762.13	12b. PERSONAL INJURY 5,000,000.00	12c. WRONGFUL DEATH N/A	12d. TOTAL (Failure to specify may cause forfeiture of your rights). 5,000,762.13
I CERTIFY THAT THE AMOUNT OF CLAIM COVERS ONLY DAMAGES AND INJURIES CAUSED BY THE INCIDENT ABOVE AND AGREE TO ACCEPT SAID AMOUNT IN FULL SATISFACTION AND FINAL SETTLEMENT OF THIS CLAIM.			
13a. SIGNATURE OF CLAIMANT (See instructions on reverse side). 		13b. PHONE NUMBER OF PERSON SIGNING FORM 718 390-0580	14. DATE OF SIGNATURE 02/23/2017
CIVIL PENALTY FOR PRESENTING FRAUDULENT CLAIM		CRIMINAL PENALTY FOR PRESENTING FRAUDULENT CLAIM OR MAKING FALSE STATEMENTS Fine, imprisonment, or both. (See 18 U.S.C. 287, 1001.)	
The claimant is liable to the United States Government for a civil penalty of not less than \$5,000 and not more than \$10,000, plus 3 times the amount of damages sustained by the Government. (See 31 U.S.C. 3729).			

EXHIBIT "2"



United States Department of the Interior

OFFICE OF THE SOLICITOR
One Gateway Center - Suite 612
Newton, MA 02458-2881

TEL: (617) 527-3400
FAX: (617) 527-6848

May 17, 2017

15-615, 16-94
Certified Mail RRR
No. 7015 0640 0007 7779 7076

Ms. Stacey Reilly
c/o Dell & Dean PLLC
1225 Franklin Avenue
Garden City, NY 11530

Re: Your Claim Received May 15, 2017

Dear Ms. Reilly:

Your claim for personal injury and property damage in the amount of \$5,000,762.13 has been referred to this office for an administrative determination pursuant to 28 U.S.C. § 2672. According to your claim, you were injured at approximately 10:30 a.m. on June 7, 2015 while bicycling on U.S.S. North Carolina Road between Battery Hudson Road and Tennessee Range Road, inside Fort Wadsworth, Staten Island, NY. You assert that you attempted to go around a speed bump, hit broken asphalt, and were thrown from your bicycle. Fort Wadsworth is managed by the National Park Service as a unit of Gateway National Recreation Area. You assert \$5,000,000.00 in personal injury and \$762.13 in property damage. You signed this claim form on February 23, 2017.

This claim is identical to that filed by you on October 5, 2015 with an address c/o Law Office of Charles C. DeStefano, of Staten Island (attached). I denied that claim by letter of October 14, 2015 (attached). On February 9, 2016, you filed suit in the U.S. District Court for the Eastern District of New York, (Case no. 1:16-CV-00784-CBA-VMS) by your attorney, Mr. O'Malley. A final decision was rendered by Judge Amon after oral argument on December 22, 2016, granting the Government's motion to dismiss (copy of notification attached). It is a fundamental principle of law that a final judgment rendered by a court of competent jurisdiction constitutes an absolute bar to a subsequent action involving the same claim, demand, or cause of action. See e.g. COMMISSIONER OF INTERNAL REVENUE V. SUNNEN, 333 U.S. 591, 596 (1948). Accordingly, I must deny your claim.

If you wish to contest this determination, you may resubmit said claim to this office within a period of six months from the date of the mailing of this letter with a request that it be reconsidered. Such a request for reconsideration must set the mailing of this letter with a request that it be reconsidered. Such a request for reconsideration must set forth fully the basis thereof. Alternatively, you may consider this letter as a final determination of the

Department of the Interior and may file suit in the appropriate United States District Court within six months of the mailing of this letter. This letter was mailed on the date shown above.

Very truly yours,



Andrew Tittler
Field Solicitor

Attachments (3)

cc: Superintendent, GATE

ATTORNEY VERIFICATION

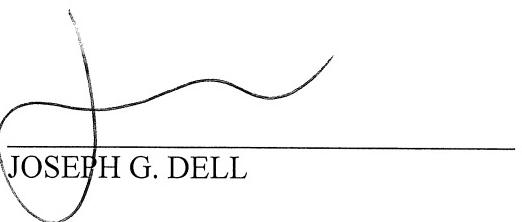
STATE OF NEW YORK)
) ss.:
COUNTY OF NASSAU)

JOSEPH G. DELL, an attorney admitted to practice in the Courts of New York State, states that:

1. I am the managing member and President of DELL & DEAN, PLLC, the attorneys for the plaintiff in the within action;
2. I have read the foregoing COMPLAINT and know its contents to be true to my own knowledge, except as to the matter therein stated to be alleged on information and belief, as to those matters I believe them to be true;
3. The reason I make this verification instead of the plaintiff is that plaintiff does not reside within the county in which your affiant's office is located;
4. The sources for information and the grounds for my belief are based upon my conversations with the plaintiffs, correspondence, investigation, statements, and information in affiant's office.

I affirm that the foregoing statements are true under penalty of perjury.

Dated: Garden City, New York
November 17, 2017



JOSEPH G. DELL

A handwritten signature in black ink, appearing to read "JOSEPH G. DELL", is written over a horizontal line. The signature is fluid and cursive, with a large loop on the left and a smaller loop on the right.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
STACEY REILLY,

Index No:

Plaintiff,

- against -

UNITED STATES OF AMERICA,

Defendants.

-----X

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SUMMONS & VERIFIED COMPLAINT

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